



General Assembly

Substitute Bill No. 415

February Session, 2006

* _____SB00415ENV____030906_____*

**AN ACT CONCERNING ENVIRONMENTAL REMEDIATION
ALLOCATION.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22a-452 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2006*):

3 (a) Any person [, firm, corporation] or municipality which contains
4 or removes or otherwise mitigates the effects of oil or petroleum or
5 chemical liquids or solid, liquid or gaseous products or hazardous
6 wastes or hazardous substances resulting from any discharge, spillage,
7 uncontrolled loss, seepage or filtration of such substance or material or
8 waste shall be entitled to reimbursement or recovery from any person
9 [, firm or corporation] for the reasonable costs expended or to be
10 expended for such containment, removal, or mitigation, including the
11 reasonable costs of investigation and monitoring, if such oil or
12 petroleum or chemical liquids or solid, liquid or gaseous products or
13 hazardous wastes or hazardous substances pollution or contamination
14 or other emergency [resulted from the negligence or other actions of
15 such person, firm or corporation] (1) was directly or indirectly caused
16 by such person, or (2) such person, regardless of fault, is one of the
17 following: (A) The owner or operator of a facility, (B) any person who,
18 at the time of disposal of any hazardous substance, owned or operated
19 any facility at which such hazardous substances were disposed of, (C)

20 any person who, by contract, agreement or otherwise, arranged for
21 disposal or treatment, or arranged with a transporter for transport for
22 disposal or treatment, of hazardous substances owned or possessed by
23 such person, by any other party or entity at any facility owned or
24 operated by another party or entity and containing such hazardous
25 substances, and (D) any person who accepts or accepted any
26 hazardous substances for transport to disposal or treatment facilities or
27 sites selected by such person, from which there is any discharge,
28 spillage, uncontrolled loss, seepage or filtration of hazardous
29 substances. When such pollution or contamination or emergency
30 results from the joint [negligence or other] actions or omissions of two
31 or more persons, [firms or corporations,] each shall be liable to the
32 others for a pro rata share of the costs of containing, and removing or
33 otherwise mitigating the effects of the same and for all damage caused
34 thereby. For purposes of this section, "hazardous substances" has the
35 same meaning as provided in section 22a-134 and "owner and
36 operator" and "facility" have the same meanings as provided in 42 USC
37 9601.

38 (b) No person [, firm or corporation which] who renders assistance
39 or advice in mitigating or attempting to mitigate the effects of an actual
40 or threatened discharge of oil or petroleum or chemical liquids or
41 solid, liquid or gaseous products or hazardous [materials] wastes or
42 hazardous substances, other than a discharge of oil as defined in
43 section 22a-457b, to the surface waters of the state, or [which] who
44 assists in preventing, cleaning-up or disposing of any such discharge
45 shall be held liable, notwithstanding any other provision of law, for
46 civil damages as a result of any act or omission by him in rendering
47 such assistance or advice, except acts or omissions amounting to gross
48 negligence or wilful or wanton misconduct, unless he is compensated
49 for such assistance or advice for more than actual expenses. For the
50 purpose of this subsection, "discharge" means spillage, uncontrolled
51 loss, seepage or filtration, [and "hazardous materials" means any
52 material or substance designated as such by any state or federal law or
53 regulation.]

54 (c) The immunity provided in this section shall not apply to (1) any
55 person, firm or corporation responsible for such discharge, or under a
56 duty to mitigate the effects of such discharge, (2) any agency or
57 instrumentality of such person, firm or corporation, or (3) negligence
58 in the operation of a motor vehicle.

59 (d) An action for reimbursement or recovery of the reasonable costs
60 expended for containment, removal or mitigation, including the
61 reasonable costs of investigation and monitoring, shall be commenced
62 not later than six years after initiation of the physical on-site
63 construction of the remedial action taken to contain, remove or
64 mitigate the effects of oil or petroleum or chemical liquids or solid,
65 liquid or gaseous products or hazardous wastes or hazardous
66 substances, or three years after the completion of the containment,
67 removal or mitigation activities, whichever is later.

68 (e) In any action brought pursuant to this section, the Superior
69 Court may issue an order granting the reimbursement or recovery of
70 reasonable costs to be incurred in the future.

71 (f) A person shall not be liable under this section where the person
72 can establish by a preponderance of the evidence that the discharge,
73 spillage, uncontrolled loss, seepage or filtration of a hazardous
74 substance and the resulting damages were caused solely by (1) an act
75 of God, (2) an act of war, (3) an act or omission of a third party other
76 than (A) an employee or agent of the person, or (B) a third party whose
77 act or omission occurs in connection with a contractual relationship,
78 existing directly or indirectly, with the person, except that a person
79 shall not be liable where the sole contractual arrangement with such
80 third party arises from a published tariff and acceptance for carriage
81 by a common carrier by rail, if the person establishes by a
82 preponderance of the evidence that such person (i) exercised due care
83 with respect to the hazardous substance taking into consideration the
84 characteristics of such hazardous substance, in light of all relevant facts
85 and circumstances, and (ii) took precautions against foreseeable acts or
86 omissions of any such third party and the consequences that could

87 foreseeably result from such acts or omissions, or (4) any combination
 88 of the foregoing.

89 (g) This section shall apply to any action brought before, on or after
 90 July 1, 2006, for the reimbursement or recovery of the reasonable costs
 91 for containment, removal or mitigation, including the reasonable costs
 92 of investigation and monitoring, except that it shall not apply to any
 93 action that has become final, and is no longer subject to appeal, prior to
 94 July 1, 2006.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2006	22a-452

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Statement of Legislative Commissioners:

A redundant phrase was removed from subsection (a) and portions of subsection (f) were rephrased for purposes of clarity.

ENV *Joint Favorable Subst.*